

Todd M. Friedman (SBN 216752)  
Nicholas J. Bontrager (SBN 252114)  
LAW OFFICES OF TODD M. FRIEDMAN, P.C.  
369 S. Doheny Dr., #415  
Beverly Hills, CA 90211  
Phone: 877-206-4741  
Fax: 866-633-0228  
tfriedman@attorneysforconsumers.com  
nbontrager@attorneysforconsumers.com

*Attorneys for Plaintiff*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

CARRIE COUSER, on behalf of herself and  
all others similarly situated,

Plaintiff,

vs.

COMENITY BANK and DOES 1 through 10,  
inclusive, and each of them,

Defendants.

Case No. **'12CV2484 MMABGS**

**CLASS ACTION**

**COMPLAINT FOR VIOLATIONS OF:**

1. NEGLIGENT VIOLATIONS OF  
THE TELEPHONE CONSUMER  
PROTECTION ACT [47 U.S.C.  
§227 ET SEQ.]
2. WILLFUL VIOLATIONS OF  
THE TELEPHONE CONSUMER  
PROTECTION ACT [47 U.S.C.  
§227 ET SEQ.]

**DEMAND FOR JURY TRIAL**

Plaintiff, Carrie Couse ("Plaintiff"), on behalf of herself and all others similarly  
situated, alleges the following upon information and belief based upon personal knowledge:

**NATURE OF THE CASE**

1. Plaintiff brings this action for herself and others similarly situated seeking  
damages and any other available legal or equitable remedies resulting from the illegal actions  
of Comenity Bank, ("Defendant" or "CCS"), in negligently, knowingly, and/or willfully  
contacting Plaintiff on Plaintiff's cellular telephone in violation of the Telephone Consumer

1 Protection Act, 47. U.S.C. § 227 *et seq.* (“TCPA”), thereby invading Plaintiff’s privacy.

2 **JURISDICTION & VENUE**

3 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a resident  
4 of California, seeks relief on behalf of a Class, which will result in at least one class member  
5 belonging to a different state than that of Defendant, a company with its principal place of  
6 business and State of Incorporation in Delaware state. Plaintiff also seeks up to \$1,500.00 in  
7 damages for each call in violation of the TCPA, which, when aggregated among a proposed  
8 class in the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.  
9 Therefore, both diversity jurisdiction and the damages threshold under the Class Action  
10 Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

11 3. Venue is proper in the United States District Court for the Southern District of  
12 California pursuant to 18 U.S.C. 1391(b) and 18 U.S.C. § 1441(a) because Defendant does  
13 business within the state of California and the county of San Diego.

14 **PARTIES**

15 4. Plaintiff, Carrie Couser (“Plaintiff”), is a natural person residing in California  
16 and is a “person” as defined by 47 U.S.C. § 153 (10).

17 5. Defendant, Comenity Bank (“Defendant” or “CCS”), is a leader in the  
18 consumer credit lending industry and is a “person” as defined by 47 U.S.C. § 153 (10).

19 6. The above named Defendant, and its subsidiaries and agents, are collectively  
20 referred to as “Defendants.” The true names and capacities of the Defendants sued herein as  
21 DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who  
22 therefore sues such Defendants by fictitious names. Each of the Defendants designated herein  
23 as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of  
24 Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants  
25 when such identities become known.

26 7. Plaintiff is informed and believes that at all relevant times, each and every  
27 Defendant was acting as an agent and/or employee of each of the other Defendants and was  
28 acting within the course and scope of said agency and/or employment with the full knowledge

1 and consent of each of the other Defendants. Plaintiff is informed and believes that each of the  
2 acts and/or omissions complained of herein was made known to, and ratified by, each of the  
3 other Defendants.

#### 4 **FACTUAL ALLEGATIONS**

5 8. Beginning in or around January of 2012, Defendant contacted Plaintiff on her  
6 cellular telephone, (909) 684-4164, in an attempt to collect an alleged outstanding debt owed  
7 by her now deceased mother, Virgie Smith.

8 9. Defendant placed multiple calls in a single day, often upwards of four (4) to  
9 five (5) calls a day to Plaintiff's cellular telephone seeking to collect the alleged debt owed by  
10 her mother.

11 10. Defendant used an "automatic telephone dialing system", as defined by 47  
12 U.S.C. § 227(a)(1) to place its daily calls to Plaintiff seeking to collect the debt allegedly owed  
13 by her mother

14 11. Defendant's calls constituted calls that were not for emergency purposes as  
15 defined by 47 U.S.C. § 227(b)(1)(A).

16 12. Defendant's calls were placed to telephone number assigned to a cellular  
17 telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. §  
18 227(b)(1).

19 13. On several occasions, Plaintiff answered Defendant's telephone call and  
20 informed an agent for Defendant that: 1) Plaintiff's mother cannot be reached on Plaintiff's  
21 telephone; 2) that Defendant has an incorrect telephone number and; 3) that Defendant must  
22 cease placing such calls to Plaintiff.

23 14. Despite receiving this information on numerous occasions, Defendant continued  
24 to place daily calls to Plaintiff, on her cellular telephone, using an "automated telephone dialing  
25 system."

26 15. Plaintiff does not owe the alleged debt Defendant is calling her about and has  
27 never provided any personal information, including her cellular telephone number, to  
28 Defendant for any purpose whatsoever. Accordingly, Defendant never received Plaintiff's

1 “prior express consent” to receive calls using an automatic telephone dialing system or an  
2 artificial or prerecorded voice on her cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

3 **CLASS ALLEGATIONS**

4 16. Plaintiff brings this action on behalf of herself and all others similarly situated,  
5 as a member of the proposed class (hereafter “The Class”) defined as follows:

6 All persons within the United States who received any collection  
7 telephone calls from Defendant to said person’s cellular  
8 telephone made through the use of any automatic telephone  
9 dialing system and such person had not previously consented to  
10 receiving such calls within the four years prior to the filing of this  
11 Complaint

12 17. Plaintiff represents, and is a member of, The Class, consisting of All persons  
13 within the United States who received any collection telephone calls from Defendant to said  
14 person’s cellular telephone made through the use of any automatic telephone dialing system  
15 and such person had not previously not provided their cellular telephone number to Defendant  
16 within the four years prior to the filing of this Complaint.

17 18. Defendant, its employees and agents are excluded from The Class. Plaintiff  
18 does not know the number of members in The Class, but believes the Class members number in  
19 the thousands, if not more. Thus, this matter should be certified as a Class Action to assist in  
20 the expeditious litigation of the matter.

21 19. The Class is so numerous that the individual joinder of all of its members is  
22 impractical. While the exact number and identities of The Class members are unknown to  
23 Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is  
24 informed and believes and thereon alleges that The Class includes thousands of members.  
25 Plaintiff alleges that The Class members may be ascertained by the records maintained by  
26 Defendant.

27 20. Plaintiff and members of The Class were harmed by the acts of Defendant in at  
28 least the following ways: Defendant illegally contacted Plaintiff and Class members via their  
cellular telephones thereby causing Plaintiff and Class members to incur certain charges or

1 reduced telephone time for which Plaintiff and Class members had previously paid by having to  
2 retrieve or administer messages left by Defendant during those illegal calls, and invading the  
3 privacy of said Plaintiff and Class members.

4 21. Common questions of fact and law exist as to all members of The Class which  
5 predominate over any questions affecting only individual members of The Class. These  
6 common legal and factual questions, which do not vary between Class members, and which  
7 may be determined without reference to the individual circumstances of any Class members,  
8 include, but are not limited to, the following:

- 9 a. Whether, within the four years prior to the filing of this Complaint,  
10 Defendant made any collection call (other than a call made for  
11 emergency purposes or made with the prior express consent of the called  
12 party) to a Class member using any automatic telephone dialing system  
13 to any telephone number assigned to a cellular telephone service;  
14 b. Whether Plaintiff and the Class members were damages thereby, and the  
15 extent of damages for such violation; and  
16 c. Whether Defendant should be enjoined from engaging in such conduct in  
17 the future.

18 22. As a person that received numerous collection calls from Defendant using an  
19 automatic telephone dialing system, without Plaintiff's prior express consent, Plaintiff is  
20 asserting claims that are typical of The Class.

21 23. Plaintiff will fairly and adequately protect the interests of the members of The  
22 Class. Plaintiff has retained attorneys experienced in the prosecution of class actions.

23 24. A class action is superior to other available methods of fair and efficient  
24 adjudication of this controversy, since individual litigation of the claims of all Class members  
25 is impracticable. Even if every Class member could afford individual litigation, the court  
26 system could not. It would be unduly burdensome to the courts in which individual litigation  
27 of numerous issues would proceed. Individualized litigation would also present the potential  
28 for varying, inconsistent, or contradictory judgments and would magnify the delay and expense

1 to all parties and to the court system resulting from multiple trials of the same complex factual  
2 issues. By contrast, the conduct of this action as a class action presents fewer management  
3 difficulties, conserves the resources of the parties and of the court system, and protects the  
4 rights of each Class member.

5 25. The prosecution of separate actions by individual Class members would create a  
6 risk of adjudications with respect to them that would, as a practical matter, be dispositive of the  
7 interests of the other Class members not parties to such adjudications or that would  
8 substantially impair or impede the ability of such non-party Class members to protect their  
9 interests.

10 26. Defendant has acted or refused to act in respects generally applicable to The  
11 Class, thereby making appropriate final and injunctive relief with regard to the members of the  
12 California Class as a whole.

### 13 **FIRST CAUSE OF ACTION**

#### 14 **Negligent Violations of the Telephone Consumer Protection Act**

#### 15 **47 U.S.C. §227 et seq.**

16 27. Plaintiff repeats and incorporates by reference into this cause of action the  
17 allegations set forth above at Paragraphs 1-26.

18 28. The foregoing acts and omissions of Defendant constitute numerous and  
19 multiple negligent violations of the TCPA, including but not limited to each and every one of  
20 the above cited provisions of 47 U.S.C. § 227 et seq.

21 29. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq.,  
22 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for  
23 each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

24 30. Plaintiff and the Class members are also entitled to and seek injunctive relief  
25 prohibiting such conduct in the future.

**SECOND CAUSE OF ACTION**

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227 et seq.**

(Against All Defendants)

31. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-30.

32. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

33. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227 et seq.*, Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

34. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

**FIRST CAUSE OF ACTION**

**Negligent Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227 et seq.**

- As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)(1)*, Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.
- Any and all other relief that the Court deems just and proper.

**SECOND CAUSE OF ACTION**

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227 et seq.**

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. § 227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

Respectfully Submitted this 12<sup>th</sup> Day of October, 2012.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman  
Todd M. Friedman  
Law Offices of Todd M. Friedman  
Attorney for Plaintiff



JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

CARRIE COUSER, on behalf of herself and all others similarly situated,

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Law Offices of Todd M. Friedman, P.C.  
369 S. Doheny Dr., #415, Beverly Hills, CA 90211

**DEFENDANTS**

COMENITY BANK and DOES 1 through 10, inclusive, and each of them,

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

**'12CV2484 MMABGS**

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

- |   |  |   |  |  |  |
|---|--|---|--|--|--|
| <input type="checkbox"/> 110 Insurance  | <input type="checkbox"/> 310 Airplane                          | <input type="checkbox"/> 362 Personal Injury - Med. Malpractice         | <input type="checkbox"/> 610 Agriculture                                 | <input type="checkbox"/> 422 Appeal 28 USC 158                   | <input type="checkbox"/> 400 State Reapportionment                                     |
| <input type="checkbox"/> 120 Marine   | <input type="checkbox"/> 315 Airplane Product Liability        | <input type="checkbox"/> 365 Personal Injury - Product Liability        | <input type="checkbox"/> 620 Other Food & Drug                           | <input type="checkbox"/> 423 Withdrawal 28 USC 157               | <input type="checkbox"/> 410 Antitrust   |
| <input type="checkbox"/> 130 Miller Act   | <input type="checkbox"/> 320 Assault, Libel & Slander          | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 | <input type="checkbox"/> 820 Copyrights                          | <input type="checkbox"/> 430 Banks and Banking   |
| <input type="checkbox"/> 140 Negotiable Instrument                                | <input type="checkbox"/> 330 Federal Employers' Liability      | <input type="checkbox"/> 370 Other Fraud                                | <input type="checkbox"/> 630 Liquor Laws                                 | <input type="checkbox"/> 830 Patent                              | <input type="checkbox"/> 450 Commerce  |
| <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment    | <input type="checkbox"/> 340 Marine                            | <input type="checkbox"/> 371 Truth in Lending                           | <input type="checkbox"/> 640 R.R. & Truck                                | <input type="checkbox"/> 840 Trademark                           | <input type="checkbox"/> 460 Deportation   |
| <input type="checkbox"/> 151 Medicare Act   | <input type="checkbox"/> 345 Marine Product Liability          | <input type="checkbox"/> 380 Other Personal Property Damage             | <input type="checkbox"/> 650 Airline Regs.                               |  | <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations            |
| <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) | <input type="checkbox"/> 350 Motor Vehicle                     | <input type="checkbox"/> 385 Property Damage Product Liability          | <input type="checkbox"/> 660 Occupational Safety/Health                  |  | <input type="checkbox"/> 480 Consumer Credit   |
| <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits        | <input type="checkbox"/> 355 Motor Vehicle Product Liability   |   | <input type="checkbox"/> 690 Other                                       |  | <input type="checkbox"/> 490 Cable/Sat TV  |
| <input type="checkbox"/> 160 Stockholders' Suits                                  | <input type="checkbox"/> 360 Other Personal Injury             |   |  |  | <input type="checkbox"/> 810 Selective Service   |
| <input type="checkbox"/> 190 Other Contract                                       |  |   | <input type="checkbox"/> 710 Fair Labor Standards Act                    | <input type="checkbox"/> 861 HIA (1395ff)                        | <input type="checkbox"/> 850 Securities/Commodities/Exchange                           |
| <input type="checkbox"/> 195 Contract Product Liability                           |  |   | <input type="checkbox"/> 720 Labor/Mgmt. Relations                       | <input type="checkbox"/> 862 Black Lung (923)                    | <input type="checkbox"/> 875 Customer Challenge 12 USC 3410                            |
| <input type="checkbox"/> 196 Franchise  |  |   | <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act      | <input type="checkbox"/> 863 DIWC/DIWW (405(g))                  | <input type="checkbox"/> 890 Other Statutory Actions                                   |
| <input type="checkbox"/> 210 Land Condemnation                                    | <input type="checkbox"/> 441 Voting                            | <input type="checkbox"/> 510 Motions to Vacate Sentence                 | <input type="checkbox"/> 740 Railway Labor Act                           | <input type="checkbox"/> 864 SSID Title XVI                      | <input type="checkbox"/> 891 Agricultural Acts   |
| <input type="checkbox"/> 220 Foreclosure  | <input type="checkbox"/> 442 Employment                        | <input type="checkbox"/> 530 General                                    | <input type="checkbox"/> 790 Other Labor Litigation                      | <input type="checkbox"/> 865 RSI (405(g))                        | <input type="checkbox"/> 892 Economic Stabilization Act                                |
| <input type="checkbox"/> 230 Rent Lease & Ejectment                               | <input type="checkbox"/> 443 Housing/Accommodations            | <input type="checkbox"/> 535 Death Penalty                              | <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act                | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) | <input type="checkbox"/> 893 Environmental Matters                                     |
| <input type="checkbox"/> 240 Torts to Land  | <input type="checkbox"/> 444 Welfare                           | <input type="checkbox"/> 540 Mandamus & Other                           |  | <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609         | <input type="checkbox"/> 894 Energy Allocation Act                                     |
| <input type="checkbox"/> 245 Tort Product Liability                               | <input type="checkbox"/> 445 Amer. w/Disabilities - Employment | <input type="checkbox"/> 550 Civil Rights                               | <input type="checkbox"/> 462 Naturalization Application                  |  | <input type="checkbox"/> 895 Freedom of Information Act                                |
| <input type="checkbox"/> 290 All Other Real Property                              | <input type="checkbox"/> 446 Amer. w/Disabilities - Other      | <input type="checkbox"/> 555 Prison Condition                           | <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee              |  | <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice |
|   | <input checked="" type="checkbox"/> 440 Other Civil Rights     |   | <input type="checkbox"/> 465 Other Immigration Actions                   |  | <input type="checkbox"/> 950 Constitutionality of State Statutes                       |

**V. ORIGIN**

- (Place an "X" in One Box Only)
- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

47 U.S.C. § 227 et seq.; 5:552

Brief description of cause:  
Violation of the Telephone Consumer Protection Act

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 5,000,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

10/12/2012

SIGNATURE OF ATTORNEY OF RECORD

s/Todd M. Friedman

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

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# INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.